

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
BILLINGS DIVISION**

SIGNAL PEAK ENERGY, LLC,

Plaintiff and Counterclaim  
Defendant,

vs.

EASTERN MONTANA MINERALS,  
INC., and MUSSELHELL  
RESOURCES, LLC,

Defendants and  
Counterclaim Plaintiffs.

Case Number: CV 12-55-BLG-RFC

**JOINT DISCOVERY PLAN**

*Filed by Signal Peak Energy, LLC,  
Eastern Montana Minerals, Inc., and  
Musselshell Resources, LLC*

In accordance with Federal Rule of Civil Procedure 26(f) and this Court's Order dated February 20, 2013, Eastern Montana Minerals, Inc., Musselshell Resources, LLC (together, "EMM"), and Signal Peak Energy, LLC ("Signal Peak") (collectively, the "Parties") have conferred and submit this Joint Discovery Plan.

**I. CHANGES IN TIMING, FORM, OR REQUIREMENTS FOR DISCLOSURES -- FED. R. CIV. P. 26(F)(3)(A).**

The Parties do not believe that any changes should be made in the timing, form, or requirement for disclosures under Rule 26(a). The Parties will exchange their Initial Disclosures by March 26, 2013.

**II. DISCOVERY SUBJECTS AND COMPLETION DATES -- FED. R. CIV. P. 26(F)(3)(B).**

The Parties agree that discovery shall be completed no later than April 4, 2014. Neither Party believes that discovery should be conducted in phases. The Parties offer the following competing proposals regarding whether discovery should be limited to or focused on particular issues.

**Plaintiff's proposal:** Signal Peak believes that the parties should conduct discovery on the following topics:

- (1) The process of negotiating and drafting the Coal Lease and the Parties' understanding of same;
- (2) The process of negotiating and drafting the Coal Supply Agreement and the Parties' understanding of same;
- (3) The calculation of Royalties to be paid to EMM;
- (4) The calculation of additional Royalties (if any) under the Coal Lease; and
- (5) The declarations sought by each Party regarding the interpretation of the material provisions of the Coal Lease and the Coal Supply Agreement.

**Defendants' proposal:** EMM believes that the parties should conduct discovery on the following topics:

- (1) The declarations sought by SPE;
- (2) The declarations sought by EMM and allegations of liability set forth in EMM's Counterclaims;

- (3) The affirmative defenses asserted by SPE;
- (4) The damages allegedly sustained by EMM; and
- (5) Any other subjects which may arise during the course of discovery.

**III. ELECTRONIC DISCOVERY -- FED. R. CIV. P. 26(F)(3)(C).**

The Parties do not foresee any disputes or issues regarding the disclosure or discovery of electronically stored information (“ESI”). Both Parties are preserving ESI related to the facts and claims asserted in this lawsuit. The Parties will work together to resolve issues involving ESI.

**IV. PRIVILEGE ISSUES -- FED. R. CIV. P. 26(F)(3)(D).**

The Parties do not foresee any issues about claims of privilege or other protections. The Parties intend to file with the Court a Stipulation of Confidentiality and Protective Order that will address the procedure by which they will assert claims of privilege or other protections after inadvertent production of such materials. The Parties agree that if any document or other information protected by or subject to claims of privilege or protection, including but not limited to the attorney-client privilege, work product protection, and joint defense or common interest privilege, is inadvertently or mistakenly produced, such production will not waive the applicable claims of privilege or protection. After (a) written notice identifying privileged or protected documents that were inadvertently or mistakenly produced and (b) receipt of a privilege log relating to

such documents, the Party receiving such materials shall (i) return or certify the destruction of all such documents within ten (10) business days and (ii) destroy any work product or portions of any work product containing or reflecting their contents.

**V. CHANGES IN LIMITATIONS ON DISCOVERY -- FED. R. CIV. P. 26(F)(3)(E).**

The Parties see no need for changes to be made to limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules.

**VI. OTHER ORDERS THAT SHOULD BE ENTERED -- FED. R. CIV. P. 26(F)(3)(F).**

**A. ORDERS UNDER FED. R. CIV. P. 26(C).**

The Parties do not anticipate any orders under Rule 26(c) that the Court should issue at this time.

**B. ORDERS UNDER FED. R. CIV. P. 16(B).**

The Parties anticipate that this Court will issue a Scheduling Order under Rules 16(b) and 16(c) following receipt of this Joint Discovery Plan and the Rule 16(b) conference scheduled for 9:30 a.m. on April 9, 2013.

**C. ORDERS UNDER FED. R. CIV. P. 16(C).**

The Parties anticipate that this Court will issue a Scheduling Order under Rules 16(b) and 16(c) following receipt of this Joint Discovery Plan and the Rule 16(b) conference scheduled for 9:30 a.m. on April 9, 2013.

## **VII. PROPOSED SCHEDULING ORDER.**

The Parties propose the following scheduling order:

A. The deadlines to disclose all experts shall be as follows:

1. On January 14, 2014, the Parties shall simultaneously disclose all liability experts and all damage experts intended to be called at trial.

2. On February 13, 2014, the Parties shall disclose rebuttal damage experts and rebuttal liability experts, if any.

All such disclosures shall comply with Fed. R. Civ. P. 26(a)(2)(B).

B. Discovery shall close on April 4, 2014.

The Parties anticipate that all other deadlines shall be set by the Court at the Preliminary Pretrial Conference.

DATED: March 19, 2013

Respectfully submitted by:

/s/ Ross W. McLinden

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